

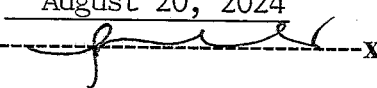
EN BANC

G.R. No. 261123 – DUTY TO ENERGIZE THE REPUBLIC THROUGH THE ENLIGHTENMENT OF THE YOUTH [DUTERTE YOUTH] PARTY-LIST, represented by [CHAIRPERSON] RONALD GIAN CARLO L. CARDEMA and REPRESENTATIVE DUCIELLE MARIE S. CARDEMA, Petitioner, v. COMMISSION ON ELECTIONS, HOUSE OF REPRESENTATIVES, KOMUNIDAD NG PAMILYA, PASYENTE, AT PERSONS WITH DISABILITIES [P3PWD] PARTY-LIST AND ITS NOMINEES led by MA. ROWENA AMELIA V. GUANZON, Respondents;

G.R. No. 261876 – DUTY TO ENERGIZE THE REPUBLIC THROUGH THE ENLIGHTENMENT OF THE YOUTH [DUTERTE YOUTH] PARTY-LIST, represented by [CHAIRPERSON] RONALD GIAN CARLO L. CARDEMA and REPRESENTATIVE DUCIELLE MARIE S. CARDEMA, Petitioner, v. MARIA ROWENA AMELIA V. GUANZON, Respondent.

Promulgated:

August 20, 2024

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CONCURRING AND DISSENTING OPINION

LEONEN, J.:

*Ang sinumang anak nitong Inang Bansa  
Mayaman, mahirap, maharlika, dukha  
Guro, magsasaka, tsuper, mangingisda  
Ay bayaning lingkod ng bayang tanging mutya.*  
- Commissioner Soc Rodrigo<sup>1</sup>

I concur with the *ponencia* that the Petition should be granted, but I dissent insofar as it directs respondent Komunidad ng Pamilya, Pasyente, at Persons with Disabilities Party-List (P3PWD) to submit additional nominees.

The inclusion of sectoral and party-list representatives in the House of Representatives was an innovation to afford broader participation in policymaking to “those who under ordinary circumstances cannot hope to win in an election.”<sup>2</sup> Sectoral representation was set to pave the way for a

<sup>1</sup> II Record, Constitutional Commission 36, 84–85 (July 22, 1986).

<sup>2</sup> II Record, Constitutional Commission 36, 45 (July 21, 1986).



more genuine grassroots consultation and “a more dynamic and vibrant democracy,”<sup>3</sup> as well as to challenge the *status quo*.<sup>4</sup>

In this regard, the Commission on Elections’ (COMELEC) cavalier attitude toward the wholesale withdrawal and substitution of party-list nominees, just right after the party-list had won a seat in Congress, reeks of abuse of the party-list system and must not be countenanced.

## I

In a democratic and republican state, all government authority emanates from the people and is exercised by their chosen representatives.<sup>5</sup> The State’s foundation hinges on effective representation and on the idea that the choices of the electorate deserve full consideration.<sup>6</sup>

In a party-list system election, as opposed to other elective positions where people vote for individuals, they vote for the party-list organization itself.<sup>7</sup> The party-list system is a constitutional innovation that expands opportunities for electoral participation.<sup>8</sup> It allows the people “belonging to marginalized and underrepresented sectors, organizations and parties, and who lack well-defined political constituencies but who could contribute”<sup>9</sup> to national policymaking, to be part of the House of Representatives.<sup>10</sup>

“As an alternative to the predominant electoral system, the party-list system is principally concerned with advancing democratic representation.”<sup>11</sup> As explained in a concurring opinion in *ANGKLA: Ang Partido ng mga Pilipinong Marino, Inc. v. Commission on Elections*:<sup>12</sup>

As an alternative to the predominant electoral system, the party-list system is principally concerned with advancing democratic representation. It endeavors to make up for the shortcomings of traditional elections through simple plurality. This is a particularly acute concern in the experience of Philippine electoral politics. As I have previously explained in my Separate Opinion in *Atong Paglaum, Inc. v. Commission on Elections*:

<sup>3</sup> II Record, Constitutional Commission 36, 84–85 (July 22, 1986).

<sup>4</sup> J. Leonen, Concurring and Dissenting Opinion in *Atong Paglaum, Inc. v. Commission on Elections*, 707 Phil. 454, 741 (2013) [Per J. Carpio, *En Banc*].

<sup>5</sup> CONST., art II, sec. 1.

<sup>6</sup> J. Leonen, Concurring and Dissenting Opinion in *Atong Paglaum, Inc. v. Commission on Elections*, 707 Phil. 454, 738 (2013) [Per J. Carpio, *En Banc*].

<sup>7</sup> *Lokin, Jr. v. COMELEC, et al.*, 635 Phil. 372–402 (2010) [Per J. Bersamin, *En Banc*].

<sup>8</sup> *COCOFED-Philippine Coconut Producers Federation, Inc. v. Commission on Elections*, 716 Phil. 19, 36 (2013) [Per J. Brion, *En Banc*].

<sup>9</sup> Republic Act No. 7941 (1995), sec. 2, Party-list System Act.

<sup>10</sup> Republic Act No. 7941 (1995), sec. 2.

<sup>11</sup> *ANGKLA: Ang Partido ng mga Pilipinong Marino, Inc. v. Commission on Elections*, 884 Phil. 333, 451 (2020) [Per J. Lazaro-Javier, *En Banc*].

<sup>12</sup> 884 Phil. 333 (2020) [Per J. Lazaro-Javier, *En Banc*].

....

The party list system is an attempt to introduce a new system of politics in our country, one where voters choose platforms and principles primarily and candidate-nominees secondarily. As provided in the Constitution, the party list system's intentions are broader than simply to "ensure that those who are marginalized and represented become lawmakers themselves."

Historically, our electoral exercises privileged the popular and, perhaps, pedigreed individual candidate over platforms and political programs. Political parties were convenient amalgamation[s] of electoral candidates from the national to the local level that gravitated towards a few of its leaders who could marshal the resources to supplement the electoral campaigns of their members. Most elections were choices between competing personalities often with very little discernible differences in their interpretation and solutions for contemporary issues. The electorate chose on the bases of personality and popularity; only after the candidates were elected to public offices will they later find out the concrete political programs that the candidate will execute. Our history is replete with instances where the programs that were executed lacked cohesion on the basis of principle. In a sense, our electoral politics alienated and marginalized large parts of our population.

The party list system was introduced to challenge the *status quo*. It could not have been intended to enhance and further entrench the same system. It is the party or the organization that is elected. It is the party list group that authorizes, hopefully through a democratic process, a priority list of its nominees. It is also the party list group that can delist or remove their nominees, and hence replace him or her, should he or she act inconsistently with the avowed principles and platforms of governance of their organization. In short, the party list system assists genuine political parties to evolve. Genuine political parties enable true representation, and hence, provide the potential for us to realize a "democratic and republican state."<sup>13</sup> (Citations omitted)

Thus, the party-list system is meant to foster true representation by focusing on ideologies, causes, and ideals and veering away from personality politics, patronage, and popularity.<sup>14</sup> Indeed, to further step away from traditional politics, the nominees of the party-list are ideally selected through a transparent and democratic process within the organization.<sup>15</sup>

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<sup>13</sup> *Id.* at 451–452.

<sup>14</sup> *Id.*

<sup>15</sup> J. Leonen, Concurring and Dissenting Opinion in *Atong Paglaum, Inc. v. Commission on Elections*, 707 Phil. 454, 752 (2013) [Per J. Carpio, *En Banc*].

Allowing party-lists to circumvent procedures for withdrawal, nomination, and acceptance of their nominees contradicts the intent behind the party-list system. These procedures are the only safeguards to ensure that the nominee is a genuine representative of the party-list. Likewise, it violates the voters' right to information.

In *Lokin Jr. v. Commission on Elections*,<sup>16</sup> this Court recognized that although the people vote for the party-list itself and not the nominees per se, they have the right to know the nominees themselves.<sup>17</sup> If a party-list could wantonly change its list of nominees by withdrawing the nominations, it would evade the voters' demand for transparency:

Although the people vote for the party-list organization itself in a party-list system of election, not for the individual nominees, they still have the right to know who the nominees of any particular party-list organization are. The publication of the list of the party-list nominees in newspapers of general circulation serves that right of the people, enabling the voters to make intelligent and informed choices. In contrast, allowing the party-list organization to change its nominees through withdrawal of their nominations, or to alter the order of the nominations after the submission of the list of nominees circumvents the voters' demand for transparency. The lawmakers' exclusion of such arbitrary withdrawal has eliminated the possibility of such circumvention.<sup>18</sup>

Informing the electorate of the individuals behind the party-list they are voting for finds basis in our Constitution: "Sovereignty resides in the people and all government authority emanates from them."<sup>19</sup> There can be no true democracy if the electorate is misled into believing that they are voting for a certain representative, only to be substituted once the seat is secured.

In *COCOFED v. Commission on Elections*,<sup>20</sup> this Court canceled the party-list's registration for failure to submit the list of five nominees before the elections. This Court recognized that the identity of the nominees plays a role in voters' choice:

The publication of the list of nominees does not only serve as the reckoning period of certain remedies and procedures under the resolution. Most importantly, the required publication satisfies the people's constitutional right to information on matters of public concern. The need for submission of the complete list required by law becomes all the more important in a party-list election to apprise the electorate of the individuals behind the party they are voting for. If only to give meaning to the right of the people to elect their representatives on the basis of an informed judgment, then the party-list group must submit a complete list of five

<sup>16</sup> 635 Phil. 372 (2010) [Per J. Bersamin, En Banc].

<sup>17</sup> *Id.* at 397.

<sup>18</sup> *Id.*

<sup>19</sup> CONST., art. II, sec. 1.

<sup>20</sup> 716 Phil. 19 (2013) [Per J. Brion, En Banc].

nominees because the identity of these five nominees carries critical bearing on the electorate's choice. A post-election completion of the list of nominees defeats this constitutional purpose.<sup>21</sup> (Citations omitted)

Here, the COMELEC approved the withdrawal and substitution of respondent P3PWD's nominees post-elections and beyond the deadline set in its own rules. In so doing, it blindsided the electorate, depriving it of critical information that could have contributed to making informed and intelligent choices.

I maintain the benchmarks on party-list participation I laid out in *Atong Paglaum, Inc. v. Commission on Elections*.<sup>22</sup>

First, the party list system includes national, regional and sectoral parties and organizations;

Second, there is no need to show that they represent the "marginalized and underrepresented". However, they will have to clearly show how their plans will impact on the "marginalized and underrepresented". Should the party list group prefer to represent a sector, then our rulings in *Ang Bagong Bayani* and *BANAT* will apply to them;

Third, the parties or organizations that participate in the party list system must not also be a participant in the election of representatives for the legislative districts. In other words, political parties that field candidates for legislative districts cannot also participate in the party list system;

Fourth, the parties or organizations must have political platforms guided by a vision of society, an understanding of history, a statement of their philosophies and how this translates into realistic political platforms;

Fifth, the parties or organizations—not only the nominees—must have concrete and verifiable track record of political participation showing their translation of their political platforms into action;

Sixth, the parties or organizations that apply for registration must be organized solely for the purpose of participating in electoral exercises;

Seventh, they must have existed for a considerable period, such as three (3) years, prior to their registration. Within that period they should be able to show concrete activities that are in line with their political platforms;

Eighth, they must have such numbers in their actual active membership roster so as to be able to mount a credible campaign for purpose of enticing their audience (national, regional or sectoral) for their election;

Ninth, a substantial number of these members must have participated in the political activities of the organization;

<sup>21</sup> *Id.* at 33–34.

<sup>22</sup> 707 Phil. 454 (2013) [Per J. Carpio, *En Banc*].

Tenth, the party list group must have a governing structure that is not only democratically elected but also one which is not dominated by the nominees themselves;

Eleventh, the nominees of the political party must be selected through a transparent and democratic process;

Twelfth, the source of the funding and other resources used by the party or organization must be clear and should not point to a few dominant contributors specifically of individuals with families that are or have participated in the elections for representatives of legislative districts;

Thirteenth, the political party or party list organization must be able to win within the two elections subsequent to their registration;

Fourteenth, they must not espouse violence; and

Fifteenth, the party list group is not a religious organization.<sup>23</sup>  
(Citations omitted)

Absent even just one of these requirements, a party-list cannot foster true representation.

## II

Here, a close study of respondent P3PWD's timeline of the withdrawal and substitution of its nominees shows a deliberate attempt to abuse the party-list system.

On October 6, 2021, respondent P3PWD submitted the following names as its nominees:

1. Grace S. Yeneza
2. Joel R. Lopez
3. Allen Jose R. Serna
4. Michelle R. Ofalla
5. Guillermo R. Eugenio<sup>24</sup>

On November 5, 2021, respondent P3PWD filed the withdrawal with substitution of its second to fifth nominees, which the COMELEC approved on November 24, 2021.<sup>25</sup> The second list of nominees is as follows:

1. Grace S. Yeneza
2. Ira Paulo A. Pozon (Substitute Nominee)
3. Marianne Heidi C. Fullon (Substitute Nominee)

<sup>23</sup> J. Leonen, Concurring and Dissenting Opinion in *Atong Paglaum, Inc. v. Commission on Elections*, 707 Phil. 454, 751–753 (2013) [Per J. Carpio, *En Banc*].

<sup>24</sup> *Rollo* (G.R. No. 261123), p. 254.

<sup>25</sup> *Id.* at 255.

4. Peter Jonas R. David (Substitute Nominee)
5. Lily Grace A. Tiangco (Substitute Nominee)<sup>26</sup>

On May 9, 2022, the 2022 national and local elections were held.<sup>27</sup> Later, on May 26, 2022, the COMELEC, sitting as the National Board of Canvassers, promulgated NBOC Resolution No. 005-22,<sup>28</sup> proclaiming that respondent P3PWD had won one seat.<sup>29</sup>

On May 30, 2022, Grace S. Yeneza (Yeneza), then respondent P3PWD's first nominee, took her oath of office.<sup>30</sup>

On June 7, 2022, Ira Paulo A. Pozon, the second nominee, resigned from the party-list as trustee, nominee, and member, citing "personal reasons" in a notarized letter of resignation.<sup>31</sup>

Two days later, or on June 9, 2022, three other nominees also tendered their resignations. The third nominee, Marianne Heidi C. Fullon, cited no reason.<sup>32</sup> The fourth nominee, Peter Jonas R. David, likewise resigned without stating any reason.<sup>33</sup> The fifth nominee, Lily Grace A. Tiangco, stated that she was resigning as she needed to help her husband in running their businesses.<sup>34</sup>

The following day, on June 10, 2022, Yeneza also resigned as first nominee, stating that she needed to take care of her daughter who was stricken with cancer.<sup>35</sup>

On June 14, 2022, respondent P3PWD filed before the COMELEC the relevant documents on the resignation of nominees and acceptance of new nominees. Those new nominees included respondent Ma. Rowena Amelia V. Guanzon (Guanzon).<sup>36</sup>

<sup>26</sup> *Id.* at 254–255.

<sup>27</sup> *Id.* at 10.

<sup>28</sup> *Id.* at 145–149.

<sup>29</sup> *Id.* at 147.

<sup>30</sup> *Id.* at 590, Respondent P3PWD's Memorandum.

<sup>31</sup> *Id.* at 97. This letter was notarized by Atty. Ryan C. Cortez and bears the following details: Doc. No. 308; Page No. 62; Book No. XX; Series of 2022.

<sup>32</sup> *Id.* at 98. The letter was notarized by a certain Atty. Concepcion M. Juatas and bears the following details: Doc. No. 244; Page No. 17; Book No. 34; Series of 2022.

<sup>33</sup> *Id.* at 99. His letter of resignation was also notarized by Atty. Ryan C. Cortez and bears the following details: Doc. No. 433; Page No. 87; Book No. XII; Series of 2022. His letter was notarized at a later date yet the notarial detail states that it can be found in Book XII, while the resignation letter of Pozon bearing an earlier date can be found in Book XX. Interestingly, the Affidavit of Acceptance of Cherrie B. Belmonte-Lim was also notarized by Atty. Ryan C. Cortez. Her affidavit was notarized on June 10, 2022 and bears the following details: Doc No. 114; Page No. 23; Book No. LX-B, Series of 2022. (*See rollo*, p. 113). Yet, the day before, Atty. Cortez notarized Peter Jonas R. David's letter of resignation, recorded in Book XII. There appears to be irregularities in the notarized documents.

<sup>34</sup> *Id.* at 100. The letter of resignation was notarized by Atty. Raymond A. Ramos and bears the following details: Doc. No. 488; Page No. 99; Book No. 219; Series of 2022.

<sup>35</sup> *Id.* at 96. The letter was notarized by Atty. Cecilia M. Misola and bears the following details: Doc. No. 11; Page No. 25; Book No. XVIII; Series of 2022.

<sup>36</sup> *Id.* at 255–256.

On June 15, 2022, the COMELEC promulgated Minute Resolution No. 22-0774,<sup>37</sup> approving the withdrawal of respondent P3PWD's previous nominees and their substitution, subject to compliance with the publication requirement. The third list of nominees bears the following names:

1. Ma. Rowena Amelia V. Guanzon
2. Rosalie J. Garcia
3. Cherrie B. Belmonte-Lim
4. Donnabel C. Tenorio
5. Rodolfo B. Villar, Jr.<sup>38</sup>

Accordingly, respondent P3PWD published its nominees in Topline News Publication on June 15, 2022, and in People's Balita on June 17, 2022.<sup>39</sup> Also on June 17, 2022, Duty to Energize the Republic Through the Enlightenment of the Youth Party-List (Duterte Youth) filed before the COMELEC a Verified Opposition to assail the substitutions.<sup>40</sup>

On June 21, 2022, Duterte Youth filed before this Court an Urgent Petition for *Certiorari* with prayer for Preliminary Injunction and/or Temporary Restraining Order and Motion for Conduct of Special Raffle before this Court.<sup>41</sup>

On June 22, 2022, the COMELEC issued Minute Resolution No. 22-0798,<sup>42</sup> noting that respondent P3PWD has complied with the publication requirement, upon recommendation of the COMELEC's Law Department.<sup>43</sup>

On the same day, the COMELEC rendered Minute Resolution No. 22-0810,<sup>44</sup> denying the Verified Opposition.<sup>45</sup> Then, acting as the National Board of Canvassers, it issued respondent P3PWD's Certificate of Proclamation, naming respondent Guanzon as the qualified nominee.<sup>46</sup>

On June 23, 2022, respondent Guanzon took her oath before Court of Appeals Associate Justice Edwin D. Sorongon.<sup>47</sup> Later, on June 27, 2022,

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<sup>37</sup> *Id.* at 254–261.

<sup>38</sup> *Id.* at 256.

<sup>39</sup> *Id.* at 266.

<sup>40</sup> *Id.* at 47.

<sup>41</sup> *Id.* at 3–34.

<sup>42</sup> *Id.* at 265–267.

<sup>43</sup> *Id.* at 266. Commissioner Aimee P. Ferolino voted to defer action because her office had yet to receive a copy of the documents submitted by respondent P3PWD as proof of compliance. *See id.* at 268.

<sup>44</sup> *Id.* at 269–274.

<sup>45</sup> *Id.* at 273–274. Commissioner Aimee P. Ferolino again voted to defer action because her office was not provided with copies of the supporting documents. *See id.* at 275.

<sup>46</sup> *Id.* at 161.

<sup>47</sup> *Id.* at 150.



she submitted her Certificate of Proclamation to the House of Representatives.<sup>48</sup>

On June 29, 2022, this Court issued a Temporary Restraining Order,<sup>49</sup> the dispositive portion of which reads:

NOW, THEREFORE, respondents COMELEC, House of Representatives, P3PWD Party-List and its nominees led by Rowena Amelia V. Guanzon are hereby required to **COMMENT** on the petition within a **NON-EXTENDIBLE** period of ten (10) days from notice hereof. Meanwhile, a **TEMPORARY RESTRAINING ORDER** is **ISSUED**, effective immediately and continuing until further orders from this Court, enjoining You, respondent COMELEC, your agents, representatives, or persons acting in your place or stead, from enforcing the assailed COMELEC Resolution. The COMELEC shall likewise furnish the Court with a duplicate original or certified true copy of its assailed resolution within five (5) days from notice hereof.<sup>50</sup>

Two glaring badges of bad faith should have placed the COMELEC on guard. First, respondent Guanzon retired as COMELEC commissioner on February 2, 2022<sup>51</sup> and became a member of respondent P3PWD two days later, on February 4, 2022.<sup>52</sup> Second, majority of the nominees withdrew for no specified reason after respondent P3PWD had been proclaimed as a winning party-list.

### III

Section 8 of Republic Act No. 7941 provides for the rule on withdrawal and substitution. It states:

SECTION 8. Nomination of Party-List Representatives. — Each registered party, organization or coalition shall submit to the COMELEC not later than forty-five (45) days before the election a list of names, not less than five (5), from which party-list representatives shall be chosen in case it obtains the required number of votes.

A person may be nominated in one (1) list only. Only persons who have given their consent in writing may be named in the list. The list shall not include any candidate for any elective office or a person who has lost his bid for an elective office in the immediately preceding election. No change of names or alteration of the order of nominees shall be allowed after the same shall have been submitted to the COMELEC except in cases where the nominee dies, or withdraws in writing his nomination, becomes incapacitated in which case the name of the substitute nominee shall be placed last in the list. Incumbent sectoral representatives in the House of

<sup>48</sup> *Id.* at 47–48.

<sup>49</sup> *Id.* at 40–43.

<sup>50</sup> *Id.* at 42.

<sup>51</sup> *Id.* at 8.

<sup>52</sup> TSN, Oral Arguments, November 14, 2023, p. 34.



Representatives who are nominated in the party-list system shall not be considered resigned.

In line with its duty to “promulgate the necessary rules and regulations”<sup>53</sup> to implement the law, the COMELEC promulgated COMELEC Resolution No. 9366, which pertinently provides:

RULE 4  
PARTY-LIST NOMINEES

SECTION 4. Withdrawal of nomination or acceptance of nomination. Withdrawal of nominations or acceptance of nominations shall be in writing and under oath, and filed with the Law Department of the Commission in Manila before the close of polls.

A nominee who withdraws his acceptance to the nomination shall not be eligible for nomination by other parties.

SECTION 5. Nomination of Party-List representatives. A person may be nominated in one (1) list only. Only persons who have given their consent in writing may be named in the list. The list shall not include any candidate for any elective office or a person who has lost his bid for an elective office in the immediately preceding election. No change of names or alteration of the order of nominees shall be allowed after the same shall have been submitted to the COMELEC except in cases where the nominee dies, or withdraws in writing his nomination, becomes incapacitated in which case the name of the substitute nominee shall be placed last in the list.

For the 2022 elections, the COMELEC issued COMELEC Resolution No. 10690, amending several provisions of the resolution. As now worded, Sections 4 and 5 state:

SECTION 4. Withdrawal of nomination or acceptance of nomination. — *Withdrawal of nominations and substitution of nominees due to the withdrawal of the acceptance to the nomination shall be in writing and under oath, and filed with the Law Department not later than NOVEMBER 15, 2021. Provided that NO substitution shall be VALID unless the party files with the Law Department a list of its substitute nominees, the certificates of nomination and acceptance of the substitute nominees, and an affidavit executed by the secretary-general and the chairperson or president of the party attesting that the substitute nominees possess all the qualifications and none of the disqualifications provided by law. The name of the substitute nominee shall be placed last in the list. The number of nominees in the new list shall be the same with the number of those previously submitted in the original list.*

*Within five (5) days from the filing of the list of substitute nominees, the party shall cause the publication of its NEW and COMPLETE list of nominees in two (2) national newspapers of general circulation. The party shall submit proof of publication of its new list of*

<sup>53</sup> Republic Act No. 7941 (1995), sec. 18.

*nominees with the Law Department within three (3) days from completion of the said publication. No substitution shall be valid without compliance with the requirements on publication and submission of proof thereof.*

A nominee who withdraws his acceptance to the nomination shall not be eligible for *re-nomination by the same party* or nomination by other parties.

SECTION 5. Nomination of Party-List representatives. — A person may be nominated in one (1) list only. Only persons who have given their consent in writing may be named in the list. The list shall not include any candidate for any elective office or a person who has lost his bid for an elective office in the immediately preceding election. No change of names or alterations of the order of nominees shall be allowed after the same shall have been submitted to the COMELEC except in cases where the nominee dies, becomes incapacitated, *or there is valid withdrawal and substitution of nominees as provided in the preceding section*, in which case the name of the substitute nominee shall be placed last in the list.


*NO substitution shall be VALID beyond the deadline provided in the preceding section unless the list of nominees originally submitted has been exhausted due to death and/or incapacity of the nominees. The party, within ten (10) days from [sic] the exhaustion of the original list, shall file with the Law Department a list of its substitute nominees, their certificates of nominations and acceptance, and an affidavit executed by the secretary-general and the chairperson or president of the party attesting that the substitute nominees possess all the qualifications and none of the disqualifications provided by law. Provided that substitutions due to the death and/or incapacity of the nominees under this paragraph shall be allowed only up to mid-day of election day.*

*The party shall cause the publication of its NEW and COMPLETE list of nominees in two (2) national newspapers of general circulation within five (5) days from the filing with the Law Department. The party shall submit proof of publication of its list of substitute nominees with the Law Department within three (3) days from completion of said publication. No substitution shall be valid without compliance with the requirements on publication and submission of proof thereof.*

*In all cases where a nominee dies or becomes incapacitated, the party shall file with the Law Department within ten (10) days from the fact thereof a notice and proof of such death or incapacity. (Emphasis supplied)*

An initial reading of Sections 4 and 5, as amended, appears confusing because of the seemingly overlapping provisions. It may appear at first that substitution is allowed only until November 15, 2021, but upon reading the rest of the amendments, it would seem that substitution is allowed any time, even after the close of the polls.

To clarify, substitution under Section 4, as amended, applies where a party-list nominee withdraws acceptance of the nomination in writing, with November 15, 2021 as the set deadline for substitution. Withdrawals and



substitutions before November 15, 2021 would not affect the choice of the electorate because the publication of the approved list of nominees is within 15 days from November 15, 2021.<sup>54</sup>

Here, when respondent P3PWD filed for withdrawal and substitution of its first list of nominees on November 5, 2021, it was within the deadline and before the publication of the approved list of candidates.<sup>55</sup>

Meanwhile, substitution under Section 5 applies where a party-list nominee dies or is incapacitated. Its first paragraph pertains to the list of nominees and partly states:

No change of names or alterations of the order of nominees shall be allowed after the same shall have been submitted to the COMELEC except in cases where the nominee dies, becomes incapacitated, *or there is valid withdrawal and substitution of nominees as provided in the preceding section*, in which case the name of the substitute nominee shall be placed last in the list. (Emphasis supplied)

The phrase “or there is valid withdrawal and substitution of nominees as provided in the preceding section” means the names can be changed due to a valid withdrawal as long as it was submitted before the deadline set by the COMELEC, and *not* after.

The second paragraph of Section 5 is a point of contention, because of its confusing phraseology. It states:

NO substitution shall be VALID beyond the deadline provided in the preceding section unless the list of nominees originally submitted has been exhausted due to death and/or incapacity of the nominees. The party, within ten (10) days from [sic] the exhaustion of the original list, shall file with the Law Department a list of its substitute nominees, their certificates of nominations and acceptance, and an affidavit executed by the secretary-general and the chairperson or president of the party attesting that the nominees possess all the qualifications and none of the disqualifications provided by law. Provided that substitutions due to the death and/or incapacity of the nominees under this paragraph shall be allowed only up to mid-day of election day.

Section 5, as amended, provides the general rule: Substitution beyond November 15, 2021 is invalid. But Section 5 also provides the exception: exhaustion of the list of nominees due to death or incapacity, in which case substitution can be had within a new deadline: “mid-day of election day.” The deletion of the phrase “or withdraws in writing his nomination” in the

<sup>54</sup> COMELEC Resolution No. 10690 (2021), sec. 1.

<sup>55</sup> *Ponencia*, p. 4.

amended provision means the COMELEC no longer allows substitution due to withdrawal in writing after mid-day of election day.

In sum, withdrawal of nomination and substitution *before the deadline* is allowed because this is done before the list of candidates and party-list organizations is published.

Withdrawal and substitution *after the deadline and up until mid-day of election day* is not allowed. It may only be allowed when: (1) the list of nominees has been exhausted; and (2) such exhaustion was caused by death or incapacity of all remaining nominees. Withdrawal of acceptance of nomination for other reasons, or without reason at all, is not allowed.

Withdrawal and substitution of all nominees after mid-day of election day and any time after that shall not be allowed. If the remaining nominees choose to resign as members of the party-list, thereby exhausting the list of nominees, substitution shall not be allowed. As explained in the *ponencia*, what cannot be done directly cannot be done indirectly.<sup>56</sup>

Thus, here, the COMELEC should not have allowed the withdrawal of the nominees in the second list, it being done after the elections. Besides, only Yeneza gave a valid reason to justify her withdrawal after the elections. The second to fifth nominees either gave a reason that was not death or incapacity, or did not bother to give a reason at all.

COMELEC Resolution No. 10690 imposed stricter conditions for allowing withdrawal and substitution. The prevailing rule for the 2022 elections does not include exhaustion of the list due to withdrawal of acceptance of nomination, or due to resignation as party-list member.

Thus, I agree with the *ponencia* that *Angcos v. Duterte Youth*<sup>57</sup> is not binding precedent.<sup>58</sup> Not only was that case dismissed through a minute resolution, but the prevailing rules then were different from the prevailing rules now.

Notably, COMELEC Resolution No. 10690 provides a timetable of deadlines for the 2022 elections, which further shows the COMELEC’s intent to be strict on substitutions done after November 15, 2021:

ACTIVITY	NEW DEADLINES
Filing of Petitions for Registration and Manifestation of Intent to Participate of	March 31, 2021

<sup>56</sup> *Ponencia*, p. 32.

<sup>57</sup> G.R. No. 253805, November 3, 2020 [Unsigned Resolution, *En Banc*].

<sup>58</sup> *Ponencia*, p. 31.

Registering Party-List Groups, Coalitions or Organizations.	
Filing of Manifestation of Intent to Participate of Existing Party-List Groups, Coalitions or Organizations	March 31, 2021
Filing of Oppositions to Petitions for Registration	Not later than the date when the case is submitted for resolution.
Submission of List of Nominees of Registering Parties	Within the period designated by the Commission for filing of Certificates of Candidacy.
Submission of List of Nominees of Existing Parties	Within the period designated by the Commission for filing of Certificates of Candidacy.
Filing of Petition to Deny Due Course to a Manifestation of Intent to Participate of Registered/Registering Party-List Groups, Organizations and Coalition	Within ten (10) days from the date of publication of the Manifestation of Intent to Participate
Filing of Petition to Deny Due Course and/or Cancellation of Nomination of Party-List Nominees	Within ten (10) days from the date of publication of the list of nominees by the EID, or in case of subsequent publication by reason of substitution, within ten (10) days from the submission of proof of publication by the party-list groups, organizations, or coalitions of its new and complete list of nominees, with respect to the substitute nominees.
Filing of Petition for Disqualification of Party-List Nominees	Any day not later than the date of proclamation.
Substitution of Party-list Nominees by Reason of Withdrawal	November 15, 2021
Publication of the Approved List of Nominees by the [Education and Information Department]	Within fifteen (15) days from November 15, 2021
Substitution of Party-list Nominees by Reason of Death or Incapacity	Up to mid-day of Election Day
Publication by the Party-List Organization of their New List of Nominees (By Reason of Withdrawal on or before November 15, 2021)	Within five (5) days FROM the filing of the new list of substitute nominees, their certificates of nomination and acceptance, and affidavit with the Law Department.
Publication by the Party-List Organization of their New List of Nominees (By Reason of Death or Incapacity AND in case of exhaustion of the list)  In this case, the party, organization, or coalition concerned may submit a new list only when the original list is exhausted.	Within five (5) days from the filing of the list of its substitute nominees, their certificates of nomination and acceptance, and affidavit with the Law Department. <sup>59</sup>

The COMELEC, therefore, committed grave abuse of discretion in allowing nominees to resign and withdraw their nominations after the close of the polls. There is no valid reason why it would strictly apply the deadline for substitutions involving district representatives, but not for substitutions of party-list representatives.

<sup>59</sup> COMELEC Resolution No. 10690 (2021), sec. 1.

The power to grant registration of a party-list includes the power to deny or cancel such registration. In the same manner, the approval of a nominee's certificate of acceptance of nomination includes the power to deny a nominee's withdrawal. To rule that the deadlines are merely directory after the close of polls, as respondents would suggest,<sup>60</sup> is to set a dangerous precedent. It would allow abuse of the party-list system and violate the voters' right to be informed of who will sit as the party-list representative.

From a different standpoint, once a party-list is proclaimed, the seat for that winning party-list is taken. Technically, there is no vacancy. The lack of nominee is not the same as vacancy.

Interestingly, when respondent Guanzon was a sitting COMELEC commissioner, she argued against substitution of party-list nominees after the deadline. In her own words: "How is it that there is no deadline for party-list and the congressmen congresswomen . . . they can only be substituted at a certain time and in case of death, incapacity, *chuchu*."<sup>61</sup>

She later wrote a dissenting opinion posted on her social media account, stating:

As the constitutional organ entrusted with the sacred duty to protect the electoral processes, the Commission must, with all its might, resist any attempt at manipulation by those who are consumed by their own ignoble self-interest. *We* must put an absolute end to this unrelenting travesty and derogation, not only of the Commission's authority, but also of the democratic institutions and processes for which the Commission stands.<sup>62</sup>

The COMELEC should have been more circumspect here. The list was exhausted because the nominees withdrew acceptance of the nomination, not because of death or incapacity. Hence, Section 4 should apply. The substitutions were beyond November 15, 2021, and thus, the COMELEC should not have allowed them. Ironically, respondent Guanzon was a sitting commissioner when COMELEC Resolution No. 10690 was issued, and was in fact its signatory. She should have been the first person to uphold the COMELEC rules.

<sup>60</sup> Ponencia, p. 23.

<sup>61</sup> Interview by Karen Davila, Journalist with Maria Rowena Amelia V. Guanzon, ANC Headstart (August 23, 2019), available at <https://youtu.be/OU-pwAktKjk?si=h-l4PQ79-ItJLnma&t=830> (last accessed on November 5, 2024).

<sup>62</sup> *In re Cardema*, Dissenting Opinion, p. 17, photos posted on respondent Guanzon's Facebook account with the handle "Rowena Guanzon," September 23, 2019, available at <https://www.facebook.com/photo/?fbid=1120116658188880&set=a.408044696062750> (last accessed on June 14, 2024.)

This is not the first time that the COMELEC allowed all party-list nominees to withdraw at the same time and granted the substitution of all its nominees after elections. During the 2019 and 2022 elections, it also approved the post-elections withdrawal and substitution of the party-list nominees of Duterte Youth—indeed, petitioner itself—and Magkakasama sa Sakahan, Kaunlaran Party-List (Cahigan/Villamin/Cortez Wing), respectively.<sup>63</sup> This reveals even more how lackadaisical the COMELEC has been in allowing mass withdrawals and substitutions.

#### IV

The COMELEC also acted with grave abuse of discretion in failing to put in place the proper mechanisms to ensure that nominees of party-lists representing marginalized and underrepresented sectors either belong to the sector it seeks to represent or possess a track record of advocacy for such sector.

In *Atong Paglaum, Inc. v. Commission on Elections*,<sup>64</sup> this Court ruled that party-lists need not belong to marginalized and underrepresented sectors. They can also be “small ideology-based and caused-oriented parties [that] lack ‘well-defined political constituencies[.]’”<sup>65</sup> For party-lists representing marginalized and underrepresented sectors, not only must majority of their members be marginalized and underrepresented, but also, their nominees “must belong to the sector, or must have a track record of advocacy for the sector represented”.<sup>66</sup>

The phrase “marginalized and underrepresented” should refer only to the sectors in Section 5 that are, by their nature, economically “marginalized and underrepresented.” These sectors are: labor, peasant, fisherfolk, urban poor, indigenous cultural communities, handicapped, veterans, overseas workers, and other similar sectors. For these sectors, a majority of the members of the sectoral party must belong to the “marginalized and underrepresented.” The nominees of the sectoral party either must belong to the sector, or must have a track record of advocacy for the sector represented. Belonging to the “marginalized and underrepresented” sector does not mean one must “wallow in poverty, destitution or infirmity.” It is sufficient that one, or his or her sector, is below the middle class. More specifically, the economically “marginalized and underrepresented” are those who fall in the low income group as classified by the National Statistical Coordination Board.

The recognition that national and regional parties, as well as sectoral parties of professionals, the elderly, women and the youth, need not be “marginalized and underrepresented” will allow small ideology-based and cause-oriented parties who lack “well-defined political constituencies” a chance to win seats in the House of Representatives. On

<sup>63</sup> *Rollo* (G.R. No. 261123), p. 851.

<sup>64</sup> 707 Phil. 454 (2013) [Per J. Carpio, *En Banc*].

<sup>65</sup> *Id.* at 543.

<sup>66</sup> *Id.*



the other hand, limiting to the “marginalized and underrepresented” the sectoral parties for labor, peasant, fisherfolk, urban poor, indigenous cultural communities, handicapped, veterans, overseas workers, and other sectors that by their nature are economically at the margins of society, will give the “marginalized and underrepresented” an opportunity to likewise win seats in the House of Representatives.<sup>67</sup> (Citation omitted)

Respondent P3PWD is a party-list that aims to advocate for and represent the “rights and interests of patients, persons with disabilities and senior citizens, among other marginalized sectors of society.”<sup>68</sup> Following *Atong Paglaum*, its nominees should either belong to this specific sector or possess a track record of their advocacy.

Yet, while respondent Guanzon has shown that she satisfied the requirement, the other nominees in the third list failed to do so.<sup>69</sup> Neither did the COMELEC, in approving the substitutions with undue haste, show that it took steps or placed mechanisms to ensure that the nominees in the third list indeed possessed the requirements in *Atong Paglaum*.

## V

Likewise palpable is the conflict of interest in the sequence of events that led to the withdrawal and substitution of the party-list nominees.

To begin with, respondent Guanzon was a sitting commissioner when respondent P3PWD’s registration for the party-list system was approved. Thus, she was not eligible to be a substitute nominee.

On March 23, 2021, respondent P3PWD filed a Petition for Registration and Accreditation as a regional sectoral organization based in the National Capital Region, which the COMELEC Second Division then approved.<sup>70</sup> On December 1, 2022, the COMELEC *En Banc*, which respondent Guanzon was a part of, released COMELEC Resolution Nos. 10733<sup>71</sup> and 10735.<sup>72</sup> The former pertained to the rules of the conduct of raffle of party-lists to determine the order of their listing in the official ballot for the 2022 elections. The latter stated that respondent P3PWD was one of the registered party-lists who participated in the raffle.

<sup>67</sup> *Id.* at 543–544.

<sup>68</sup> *Rollo* (G.R. No. 261123), p. 45.

<sup>69</sup> *Id.* at 88–94, 111–125.

<sup>70</sup> *Rollo* (G.R. No. 261123), p. 711, Respondent P3PWD’s Memorandum. The grant was issued by Commissioners Socorro B. Inting and Antonio T. Kho, Jr. (now a member of this Court) of the Second Division, Commission on Elections.

<sup>71</sup> COMELEC Resolution No. 10733 (2021), available at [https://comelec.gov.ph/php-tpls-attachments/2022NLE/Resolutions/com\\_res\\_10733.pdf](https://comelec.gov.ph/php-tpls-attachments/2022NLE/Resolutions/com_res_10733.pdf) (last accessed on November 6, 2024).

<sup>72</sup> COMELEC Resolution No. 10735 (2021), available at [https://comelec.gov.ph/php-tpls-attachments/2022NLE/Resolutions/com\\_res\\_10735.pdf](https://comelec.gov.ph/php-tpls-attachments/2022NLE/Resolutions/com_res_10735.pdf) (last accessed on November 6, 2024).

On February 2, 2022, as mentioned earlier, respondent Guanzon retired as commissioner after her seven-year term had ended.<sup>73</sup> On February 4, 2022, she became a member of respondent P3PWD, and had been so for a total of 94 days<sup>74</sup>—just about making the 90-day cutoff requirement for party-list nominees before the May 9, 2022 elections.<sup>75</sup>

On March 29, 2022, respondent Guanzon posted a reel on her Instagram account with the handle @guanzonbing. In her reel, she is seen recording, stating: “*Ito po si Rowena Guanzon, kandidato ng P3PWD Party-List. Panahon na para iboto ang P3PWD, number 54 sa balota.*”<sup>76</sup>

After the May 9, 2022 elections, respondent P3PWD won enough votes to be entitled to one seat in the House of Representatives.<sup>77</sup>

On May 14, 2022, respondent Guanzon posted a livestreaming video on her Facebook account with the handle Rowena Guanzon. In the video, she is seen seated talking to an audience, and behind her is a television flashing a photo with the word “VICTORY” at the top. Around the 5:55 mark, she mentions that Yeneza, the first nominee, was considering resigning and that she would be the substitute. In her own words:

Tayo, uupo tayo one seat. At mag-oath-taking muna si Ma’am Grace Yeneza, magkasama kami sa proclamation sa [May] 18. At mag-assume siya ng office mga July 1, pero dahil nga sa ‘yung anak niya ay may cancer, she already informed the Board na she will resign eventually and I will substitute. So ‘yung substitution na ‘yan is according to law, according to COMELEC rules, may proseso lang diyan, baka isang buwan ‘yan, pero . . . , that is . . . the remedy kung may mag-reresign na party-list. Kasi ‘yung mga . . . sa party-list lang may ganyan eh. ‘Yung after the election ‘pag nanalo, uupo muna, saka mag-reresign. Pwede mag-substitute. . . . So, ‘wag kayong mag-alala, talagang uupo ako diyan.<sup>78</sup>

Curiously, this statement was made before the other nominees filed their withdrawal.

As it so happened, on May 26, 2022, respondent P3PWD was declared to have won one seat.<sup>79</sup> And soon enough, its earlier nominees withdrew *en masse* coupled with a third list of nominees, including respondent Guanzon as its first nominee.

<sup>73</sup> Rollo (G.R. No. 261123), p. 8.

<sup>74</sup> TSN, Oral Arguments, November 14, 2023, pp. 33–34.

<sup>75</sup> Republic Act No. 7941 (1995), sec. 9.

<sup>76</sup> Instagram Reel, March 29, 2022, available at <https://www.instagram.com/tv/CbrRGLUhUE1/?igsh=dHdtdTY0aWxyaG8=> (last accessed on November 6, 2024).

<sup>77</sup> Rollo (G.R. No. 263123), p. 147.

<sup>78</sup> Facebook Live, May 14, 2022, available at <https://web.facebook.com/attyrowenaguanzon/videos/2361417014011708> (last accessed on November 6, 2024).

<sup>79</sup> Rollo (G.R. No. 621123), p. 149.

Republic Act No. 6713, or Code of Conduct and Ethical Standards for Public Officials and Employees, prohibits public officials from directly or indirectly having any financial or material interest in any transaction which require their approval. Section 7(a) of Republic Act No. 6713 provides:

SECTION 7. Prohibited Acts and Transactions. — In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

- (a) *Financial and material interest.* — Public officials and employees shall not, directly or indirectly, have any financial or material interest in any transaction requiring the approval of their office.
- (b) Outside employment and other activities related thereto. — Public officials and employees during their incumbency shall not:
  - (1) Own, control, manage or accept employment as officer, employee, consultant, counsel, broker, agent, trustee or nominee in any private enterprise regulated, supervised or licensed by their office unless expressly allowed by law;
  - (2) Engage in the private practice of their profession unless authorized by the Constitution or law, provided, that such practice will not conflict or tend to conflict with their official functions; or
  - (3) Recommend any person to any position in a private enterprise which has a regular or pending official transaction with their office.

*These prohibitions shall continue to apply for a period of one (1) year after resignation, retirement, or separation from public office, except in the case of subparagraph (b) (2) above, but the professional concerned cannot practice his profession in connection with any matter before the office he used to be with, in which case the one-year prohibition shall likewise apply. (Emphasis supplied)*

Here, the timeline of events shows that respondent Guanzon was a sitting commissioner at the time respondent P3PWD applied to register as a party-list. While she may not have been part of the Second Division that granted the application, she was part of the *En Banc* that oversaw all of the COMELEC's divisions, departments, and committees involved in preparing for the 2022 elections. She was also one of the signatories to the resolution which allowed respondent P3PWD to participate in the raffle for the order in the official ballot.

When her term ended, she actively campaigned for respondent P3PWD and eventually admitted, during the campaign period, that she

would be its nominee. After respondent P3PWD had won a seat and it became clear that she was not the nominee on record, she stated that she would be a substitute.

Evidently, a conflict of interest exists since respondent Guanzon herself, in the discharge of her official duties as a commissioner, paved the way for respondent P3PWD to become a registered party-list. This sort of undue advantage is exactly what Republic Act No. 6713 aims to avoid.

Worse is how fast respondent Guanzon became a member of respondent P3PWD—merely two days after retiring from the COMELEC, which gave her a scant four days of buffer to meet the 90-day threshold from the date of elections. As pointed out by petitioner, respondent Guanzon has performed legal acrobatics showing “abuse and misuse of her legal knowledge and influence.”<sup>80</sup>

## VI

Nonetheless, I join the *ponencia* in dismissing the indirect contempt charge against respondent Guanzon.

In *ABS-CBN v. Ampatuan*,<sup>81</sup> this Court emphasized that a petition for indirect contempt “must spell out the clear and present danger of a speech to the court’s administration of justice, identifying the interest of the court that is violated and ought to be punished.” *ABS-CBN* also listed the four ultimate facts that must be alleged in a petition for indirect contempt:

First, public statements were made regarding the merits of the case while it is pending before the courts. The petition must clearly state the contemptible conduct and reproduce the content of the speech ought to be punished.

Second, since intent is necessary in criminal contempt, the required mental element of the speaker who uttered the contemptuous speech in a judicial proceeding must be specifically alleged. It must appear from the story that the “ultimate purpose” of its publication is to impede, obstruct or degrade the administration of justice. This is inferred from the totality of the story, the context of its publication, the wording used, the manner of reporting, and other relevant factors which may be derived from the story.

Third, the clear and present danger of the utterance to the court’s administration of justice must be alleged, specifically identifying the importance and saliency of the information on the ability of courts to make an impartial decision. There must be a showing of the serious and imminent threat of an utterance on the court’s administration of justice for it to be subject to subsequent punishment.

<sup>80</sup> *Id.* at 690, Duterte Youth’s Memorandum.

<sup>81</sup> G.R. No. 227004, April 25, 2023 [Per J. Leonen, *En Banc*].

Finally, the effect of the speech on the administration of justice must be shown, particularly, that the utterance will influence the court's independence in ruling on a case, which will, in turn, affect public confidence in the Judiciary.<sup>82</sup>

Here, respondent Guanzon allegedly violated the *sub judice* rule because of her statements to the media regarding the COMELEC's, as well as this Court's, jurisdiction over the case.<sup>83</sup> However, the Petition for indirect contempt failed to satisfy the requirements in *ABS-CBN*.

First, respondent Guanzon had not yet received a copy of the Petition when she answered questions from the media. Whatever she might have known about the case were all sourced from media reports. As far as she was concerned, there was still no pending case against her.

Second, the Petition failed to show that her intent in giving an interview was to impede, obstruct, or degrade the administration of justice.<sup>84</sup> As the *ponencia* points out, respondent Guanzon's use of disclaimers such as "in my humble opinion"<sup>85</sup> and "without meaning to jump the gun on the Supreme Court" shows her deference to this Court's authority and its administration of justice.<sup>86</sup>

Third, the Petition failed to show that respondent Guanzon's utterances presented an imminent threat to this Court's administration of justice that would create a clear and present danger.

Finally, her statements were not shown to have shaken public confidence in the Judiciary.

Thus, the *ponencia* rightly upheld respondent Guanzon's freedom of expression with the dismissal of the indirect contempt charge against her.

## VII

I likewise concur with the *ponencia* that the COMELEC retained jurisdiction over this case, to the exclusion of the House of Representatives Electoral Tribunal (HRET).<sup>87</sup> While the Temporary Restraining Order issued by this Court prevented the HRET from acquiring jurisdiction over

<sup>82</sup> *Id.* at 108. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

<sup>83</sup> *Ponencia*, pp. 34, 36.

<sup>84</sup> RULES OF COURT, Rule 71, sec. 3(d). *See also ABS-CBN v. Ampatuan*, G.R. No. 227004, April 25, 2023 [Per J. Leonen, En Banc] at 108.

<sup>85</sup> *Ponencia*, p. 36.

<sup>86</sup> *Id.* at 38.

<sup>87</sup> *Id.* at 19–21.

the controversy, it is not the only reason for jurisdiction to remain with the COMELEC.

The HRET is the “sole judge of all contests relating to the election, returns, and qualifications”<sup>88</sup> of members of the House of Representatives. Article VI, Section 17 of the 1987 Constitution provides:

SECTION 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman.

An electoral tribunal only came about under the 1935 Constitution. The HRET in particular was constituted under the 1987 Constitution. Justice Reynato Puno’s concurring opinion in *Arroyo v. House of Representatives Electoral Tribunal*<sup>89</sup> traced the history of electoral tribunals in the Philippines:

Under the Philippine Bill of 1902, legislative power was vested in the Philippine Assembly and the Assembly as a body was the judge of the election, returns, and qualifications of its members. Then came the Act of Congress of August 29, 1916, commonly known as the Jones Law. Its Section 18 provides: “. . . the Senate and the House of Representatives, respectively, shall be the *sole* judges of the election, returns, and qualifications of their elective members.” Early in the case of *Veloso vs. Boards of Canvassers of Leyte and Samar*, this Court, stressing the use of the word “sole” before “judges” held that the grant of power to the Senate and the House of Representatives is “full, clear and complete.”

In 1935, a change was made on the body that will judge the election of members of Congress. Our Constitution of 1935 transferred “in its totality all the powers previously exercised by the Legislature in matters pertaining to contested elections of its members, to an *independent and impartial tribunal*.” In the 1936 benchmark case of *Angara vs. Electoral Commission, et al.*, this Court observed: “With this end in view, a composite body in which both the majority and minority parties are equally represented to off-set partisan influence in its deliberations was created, and further endowed with judicial temper by including in its membership three justices of the Supreme Court.” Thus, Section 11 of Article VI of our 1935 Constitution provides:

“Sec. 11. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the

<sup>88</sup> CONST., art. VI, sec. 17.

<sup>89</sup> 316 Phil. 464 (1995) [Per J. Francisco, *En Banc*].

*sole judge* of all contests relating to the election, returns, and qualifications of their respective Members. Each Electoral Tribunal shall be composed of nine members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or of the House of Representatives, as the case may be, who shall be chosen by each House, three upon nomination of the party having the largest number of votes and three of the party having the second largest number of votes therein. The senior Justice in each Electoral Tribunal shall be its Chairman.”

....

Our constitutional odyssey took a new turn in 1973, when we adopted the 1973 Constitution which installed a modified form of parliamentary government and a unicameral legislature, the *Batasang Pambansa*. Its Article XII (c) Section 2 (2) vested the COMELEC with the power to “be the *sole judge* of all contests relating to the election, returns, and qualifications of all members of the *Batasang Pambansa* . . .” In accord with this grant of power, COMELEC did act as *sole judge* of these contests and aggrieved parties challenged its decisions in this Court by invoking its *certiorari* jurisdiction, the traditional remedy against acts constitutive of grave abuse of discretion.

Finally, in 1987, we adopted the present Constitution as an aftermath of the EDSA revolution. Among others, the 1987 Constitution restored the two houses of Congress and their Electoral Tribunals.<sup>90</sup> (Citations omitted)

As early as 1936, this Court in *Angara v. Electoral Commission*<sup>91</sup> held that an electoral tribunal’s power to judge all challenges on the election, returns, and qualifications of National Assembly members commences upon certification by the provincial board of canvasser of the member-elect.<sup>92</sup> Since then, this Court has consistently ruled that upon the proclamation of a winning candidate, jurisdiction is transferred from the COMELEC to the electoral tribunal over issues relating to election, returns, and qualifications of a winning candidate.<sup>93</sup>

As a recognition of the source of its authority, the 2015 HRET Rules repeated the HRET’s constitutional mandate and listed the requisites for membership into the House of Representatives:

RULE 15. Jurisdiction. — The Tribunal is the sole judge of all contests relating to the election, returns, and qualifications of the Members of the House of Representatives.

<sup>90</sup> *Id.* at 501–504.

<sup>91</sup> 63 Phil. 139 (1936) [Per J. Laurel, *En Banc*].

<sup>92</sup> *Id.* at 180.

<sup>93</sup> *Vinzons-Chato v. Commission on Elections*, 548 Phil. 712, 725–726 (2007) [Per J. Callejo, Sr., *En Banc*]; *Jalosjos, Jr. v. Commission on Elections*, 689 Phil. 192, 198 (2012) [Per J. Abad, *En Banc*].

To be considered a Member of the House of Representatives, there must be a concurrence of the following requisites: (1) a valid proclamation; (2) a proper oath; and (3) assumption of office.

*Uy v. Commission on Elections*,<sup>94</sup> referring to the House of Representatives' internal rules and echoing this Court's resolution in *Reyes v. Commission on Elections*,<sup>95</sup> cited the oath before the House speaker in open session as the "proper oath" required for membership in the House of Representatives.<sup>96</sup> Nonetheless, a close scrutiny of *Reyes* shows that it was a "most unusual case"<sup>97</sup> where the majority dismissed the Petition outright but still attempted to declare a new doctrine on the COMELEC's jurisdiction vis-à-vis the HRET. Further, *Reyes* finds its basis in the pronouncement in *Guerrero v. Commission on Elections*,<sup>98</sup> which, as pointed out in a dissenting opinion, finds no jurisprudential support:

In *Guerrero*, this Court held that "... once a winning candidate has been *proclaimed, taken his oath, and assumed office* as a member of the House of Representatives, [the] COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins." The case cited *Aquino v. Commission on Elections* and *Romualdez-Marcos v. Commission on Elections* to support the statement.

A closer reading of *Aquino* and *Romualdez-Marcos* will reveal that this Court did not rule that three requisites must concur so that one may be considered a "member" of the House of Representatives subject to the jurisdiction of the electoral tribunal. On the contrary, this Court held in *Aquino* that:

Petitioner conveniently confuses the distinction between an unproclaimed candidate to the House of Representatives and a member of the same. Obtaining the highest number of votes in an election does not automatically vest the position in the winning candidate.

....

Under the above-stated provision, the electoral tribunal clearly assumes jurisdiction over all contests relative to the election, returns and qualifications of candidates for either the Senate or the House only when the latter become members of either the Senate or the House of Representatives. A candidate who has not been proclaimed and who has not taken his oath of office cannot be said to be a member of the House of Representatives subject to Section 17 of Article VI of the Constitution. While the proclamation of the winning candidate in an election is

<sup>94</sup> G.R. No. 260650, August 8, 2023 [Per J. M. Lopez, *En Banc*].

<sup>95</sup> 712 Phil. 192 (2013) [Per J. Perez, *En Banc*].

<sup>96</sup> *Uy v. Commission on Elections*, G.R. No. 260650, August 8, 2023 [Per J. M. Lopez, *En Banc*] at 9. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

<sup>97</sup> J. Brion, Dissenting Opinion in *Reyes v. Commission on Elections*, 712 Phil. 192, 222 (2013) [Per J. Perez, *En Banc*].

<sup>98</sup> 391 Phil. 344 (2000) [Per J. Quisumbing, *En Banc*].



ministerial, B.P. 881 in conjunction with Sec. 6 of R.A. 6646 allows suspension of proclamation under circumstances mentioned therein. . . .

In *Romualdez-Marcos*, this Court held that:

As to the House of Representatives Electoral Tribunal's supposed assumption of jurisdiction over the issue of petitioner's qualifications after the May 8, 1995 elections, suffice it to say that HRET's jurisdiction as the sole judge of all contests relating to the elections, returns, and qualifications of members of Congress begins only after a candidate has become a member of the House of Representatives. Petitioner not being a member of the House of Representatives, it is obvious that the HRET at this point has no jurisdiction over the question.

To be sure, the petitioners who were the winning candidates in *Aquino* and *Romualdez-Marcos* invoked the jurisdiction of the House of Representatives Electoral Tribunal though they had not yet been proclaimed. Thus, this Court held that the Commission on Elections still had jurisdiction over the disqualification cases.

This Court did not create a new doctrine in *Aquino* as seen in the Concurring and Dissenting Opinion of Justice Francisco where he said:

The operative acts necessary for an electoral candidate's rightful assumption of the office for which he ran are his proclamation and his taking an oath of office. Petitioner cannot in anyway be considered as a member of the House of Representatives for the purpose of divesting the Commission on Elections of jurisdiction to declare his disqualification and invoking instead HRET's jurisdiction, it indubitably appearing that he has yet to be proclaimed, much less has he taken an oath of office. Clearly, petitioner's reliance on the aforecited cases which when perused involved Congressional members, is totally misplaced, if not wholly inapplicable. That the jurisdiction conferred upon HRET extends only to Congressional members is further established by judicial notice of HRET Rules of Procedure, and HRET decisions consistently holding that the proclamation of a winner in the contested election is the essential requisite vesting jurisdiction on the HRET.

In fact, the Separate Opinion of Justice Mendoza in *Romualdez-Marcos* will tell us that he espoused a more radical approach to the jurisdiction of the electoral tribunals. Justice Mendoza is of the opinion that "the eligibility of a [candidate] for the office [in the House of Representatives] may only be inquired into by the [House of Representatives Electoral Tribunal]," even if the candidate in *Romualdez-Marcos* was not yet proclaimed. Justice Mendoza explained, thus:

Three reasons may be cited to explain the absence of an authorized proceeding for determining before election the qualifications of a candidate.



....

Third is the policy underlying the prohibition against pre-proclamation cases in elections for President, Vice President, Senators and members of the House of Representatives. (R.A. No. 7166, Section 15) The purpose is to preserve the prerogatives of the House of Representatives Electoral Tribunal and the other Tribunals as “sole judges” under the Constitution of the election, returns, and qualifications of members of Congress of the President and Vice President, as the case may be.

Thus, the pronouncement in *Guerrero* that is used in the main *ponencia* as the basis for its ruling is not supported by prior Decisions of this Court. More importantly, it cannot be considered to have changed the doctrine in *Angara v. Electoral Commission*. *Instead, it was only made in the context of the facts in Guerrero* where the Decision of the Commission on Elections *En Banc* was issued only after the proclamation and the assumption of office of the winning candidate. In other words, the contention that there must be proclamation, taking of the oath, and assumption of office before the House of Representatives Electoral Tribunal takes over is not *ratio decidendi*.<sup>99</sup> (Citations omitted)

This Court in *Javier v. Commission on Elections*<sup>100</sup> explained how “election, returns, and qualifications” should be interpreted:

The phrase “election, returns and qualifications” should be interpreted in its totality as referring to all matters affecting the validity of the contestee’s title. But if it is necessary to specify, we can say that “election” referred to the conduct of the polls, including the listing of voters, the holding of the electoral campaign, and the casting and counting of the votes; “returns” to the canvass of the returns and the proclamation of the winners, including questions concerning the composition of the board of canvassers and the authenticity of the election returns; and “qualifications” to matters that could be raised in a *quo warranto* proceeding against the proclaimed winner, such as his disloyalty or ineligibility or the inadequacy of his certificate of candidacy.<sup>101</sup>

Here, it is not disputed that respondent P3PWD was proclaimed to be entitled to one seat. Neither is it disputed that respondent Guanzon took her oath.<sup>102</sup> However, the issue in question does not fall under “election, returns, and qualifications” of a winning candidate, but focuses on the validity of the substitution of respondent P3PWD’s nominees after all five previous nominees had stepped down within two days, with four not even bothering to proffer a valid reason for their withdrawal. Clearly, jurisdiction remained with the COMELEC, not the HRET.

<sup>99</sup> J. Leonen, Dissenting Opinion in *Reyes v. Commission on Elections*, 720 Phil. 174, 299–302 (2013) [Per J. Perez, *En Banc*].

<sup>100</sup> 228 Phil. 193 (1986) [Per J. Cruz, *En Banc*].

<sup>101</sup> *Id.* at 205–206.

<sup>102</sup> *Ponencia*, p. 7.

Surely, respondent Guanzon and the other nominees in the third list are more than capable of serving the sector they seek to represent. Their desire to represent and advocate for the rights and interests of patients, persons with disabilities, and senior citizens in the House of Representatives is admirable; their advocacies certainly have a place in Congress. With their hearts fully dedicated to public service, they could run as elective public officials in the future, but not at this time.

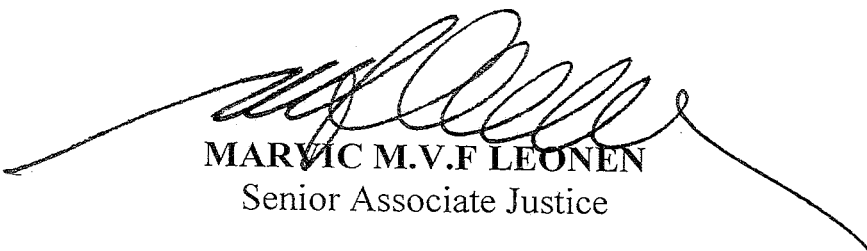
Quite fittingly, party-list nominees, in submitting a sworn certificate of acceptance of nomination, declares that:

**I AM ELIGIBLE** for the office for which I am nominated as I possess all the legal qualifications and none of the disqualification. I will support and defend the Constitution of the Philippines, and will maintain true faith and allegiance thereto; I will obey all the laws, legal orders and decrees promulgated by the duly constituted authorities of the Republic of the Philippines; and I impose this obligation upon myself voluntarily, without mental reservation or purpose of evasion.<sup>103</sup>

Upholding the Constitution, maintaining faith and allegiance to it, and obeying the law—surely, these include respecting electoral processes.

The interest of the sovereign people in genuine representation is overriding. Minute Resolution No. 22-0774 defies the people's interest. It should be nullified. The withdrawals should never have been granted; the second list of nominees should stand.

**ACCORDINGLY**, I vote to **GRANT** the Petition and declare the Commission on Elections' Minute Resolution No. 22-0774 to be **VOID** for having been issued with grave abuse of discretion. I likewise vote that respondent Komunidad ng Pamilya, Pasyente, at Persons with Disabilities Party-List be **DIRECTED** to choose their nominee from its second list of nominees submitted to the Commission on Elections.



MARVIC M.V.F LEONEN  
Senior Associate Justice

<sup>103</sup> Copy of Certificate of Acceptance, available at [https://comelec.gov.ph/php-tpls-attachments/References/ComelecResolutions/NLE/2013NLE/com\\_res\\_9366\\_Certof\\_Acceptance.pdf](https://comelec.gov.ph/php-tpls-attachments/References/ComelecResolutions/NLE/2013NLE/com_res_9366_Certof_Acceptance.pdf) (last accessed on November 6, 2024).